

interfere, it will be declared that he is not entitled to the benefit of the will unless he gives an undertaking not to interfere, and in the event of his giving such an undertaking the trustees are entitled to the guardianship, *Jones v. Stockett*, 2 Bl. 431; *Colston v. Morris*, 2 Jac. 257, in n. a. to *Lyons v. Blenkin*, Jac. 245; and see *Potts v. Norton*, n. (1) to 2 P. Wms. 110; *Blake v. Blake*, Ambl. 306; *Powell v. Cleaver*, 2 Bro. C. C. 499; *De Manneville v. De Manneville*, 10 Ves. Jun. 52. However, in the *State v. Jordan*, 3 H. & McH. 179, it was held that the securities on a testamentary bond were not liable for a legacy, bequeathed by a grandfather on condition that his executors should be the guardians, and have the care of the persons and education of the legatees, and the management of their estates, on the ground that it was not the duty of the executor to act as guardian;⁷ see *Watkins v. the State*, 2 G. & J. 220; Code, Art. 93, secs. 151, 152.⁸

It has also been held that, in some instances, the Orphans Court may stand *in loco parentis*, and for the benefit of the infant appoint a guardian, upon the latter's agreement to support and educate the infant gratuitously, and to waive all claim to compensation for the management of the infant's property, and such a contract is valid and may be enforced in an action upon the guardian's bond, *State v. Baker*, 8 Md. 44.

Probate and chancery guardians.—With us, where the lands to which the infant is entitled lie within the State, or administration of an estate in which he is interested is granted here, the Orphans Courts have generally the power of appointing guardians, *Fridge v. the State*, 3 G. & J. 103;⁹ and by the Code, Art. 93, secs. 144-146,¹⁰ (Act 1834, ch. 291,) authority is given to the Orphans' Courts to appoint guardians to infants entitled to real and *personal property, though the father or mother be **469** living at the time of the appointment, which appointment is to be as valid as if the father and mother were both dead, but notice is to be given to the father, or to the mother, if he be dead, to shew cause against the ap-

⁷ As to the right of a guardian to receive a legacy bequeathed to his ward and to be paid to the latter on his attaining majority, see *Gunther v. State*, 31 Md. 21; *Hindman v. State*, 61 Md. 471; *Strite v. Furst*, 112 Md. 104. Cf. *Smith v. Michael*, 113 Md. 10.

⁸ Code 1911, Art. 93, secs. 151, 152, the last named section having been amended so as to allow the Orphans Court to order an administrator who is ready to pay over money to a minor for whom no guardian has been appointed, to deposit the same in bank subject to the court's order.

As to guardians by estoppel, or constructive guardians, see *Weaver v. Leiman*, 52 Md. 715; *Shaw v. Devecmon*, 81 Md. 215. Cf. *Armitage v. Snowden*, 41 Md. 119.

⁹ *Gunther v. State*, 31 Md. 28.

¹⁰ Code 1911, Art. 93, secs. 144-146; sec. 144 having been amended so as to give the power of appointment to the Orphans Court of the county where the infant resides, instead of to that of the county where the land lies, or in which administration of the personal estate is granted.